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MONTANA ENERGY CONSERVATION PLAN

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Working Paper No. 13

MONTANA ENERGY CONSERVATION PLAN: IMPLICATIONS FOR STATE-LOCAL GOVERNMENT RELATIONS

A Report to the
Montana Energy Advisory Council

Prepared for

The Montana Energy and MHD Research and Development Institute, Inc.
Butte, Montana

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Montana Energy Conservation Plan:
Implications for State - Local Government Relations

The Energy Policy and Conservation Act signals emergence of still another set of intergovernmental relationships in the constantly evolving Federal system. Just as the grant mechanism in PL 94-163 imposes certain modifications in state policy, the state government must address the question of possible changes in patterns of state - local policies and relationships in order to comply with the federal government's mandate. The timing of implementation of an energy conservation program involving local governments creates both complications and opportunity. Complications are likely because the 1977 legislature is faced already with the complex task of modifying and/or approving the recodification package of all local government law submitted by the Montana Commission on Local Government. The last minute introduction of changes stemming from energy policy requirements may not be acceptable to either the Commission or the legislature since nearly two years of research, drafting, hearings and revisions have taken place. However, some opportunity for amendment also exists since the door to innovative changes is not closed, even in the current legislative session. And, if the code is rejected or delayed by the current legislature, an interim study period is likely in which the energy issues can be considered. This appendix will outline the major points of Montana's exhaustive local government reorganization process, identify the possible structural constraints to energy conservation policy, identify the potential opportunities for igniting innovative energy conservation changes and suggest the problems of state - local relations which will need to be addressed in creating a successful energy conservation policy.

The very ambitious Montana approach to the reorganization of local governments is the consequence of the very flexible local government article of the 1972 constitution. While the scope of intended reform is quite broad, it is important to remember that the process is not yet complete and that, in many substantive areas, changes may not be achieved. Nevertheless, a brief description of the pre-1972 pattern of local government is outlined here, followed by a discussion of the changes made by the constitution and by subsequent legislative sessions. A summary profile of local government powers anticipated for the 1977 revised code of local governments (see Working Paper #14) will allow for identification of the areas into which energy conservation measures can be fitted.

State - local relations in Montana always have been a function of "Dillon's rule," according to which local governments rely upon the state insofar as the authority to exercise any local power is concerned. Thus, cities, towns and -- to an even greater extent -- counties, have been able to exercise only those powers, perform only those functions and deliver only those services explicitly allowed by the legislature. Counties have not possessed even ordinance power and have exercised only very limited powers of legislation through resolution. Counties also have been required to carry out their limited functions according to detailed legislative stipulation, especially in those areas where the county has acted as an administrative subdivision of the state. Both counties and incorporated municipalities have had to look to Helena each legislative session for special laws which address uniquely local problems. They have not found the state generous in supplying revenues to meet service demands at the local level.

The 1972 Constitution provided for significant alteration of this pattern of state - local relations in the following respects:

(1.) The status of cities and towns, on the one hand, and counties on the other, was substantially equalized. Counties are authorized to exercise

legislative, administrative and other powers provided or implied by law (Article XI, Section 4, (b.)) cities and towns continue to possess these powers as well as the powers of a municipal corporation (Article XI, Section 4, (c)). In effect, much of the traditional distinction between cities as suppliers of services to property and counties as suppliers of services to people is removed by these provisions. This means that a county, because of its greater territorial compass, may now be chosen as the more appropriate unit to deliver a service usually confined to city or town boundaries. The legislature will decide the extent of this grant of powers to counties since, for the most part, the proposed code language treats cities and counties in equal terms. It should be noted that, in some instances, counties retain special status as the administrative agent of the state. This status is important in considering certain energy conservation programs, such as fuel allocation or curtailment, which the state may decide to mandate.

(2.) The powers of cities, towns and counties -- including those which may be added by the 1977 version of the code -- are to be construed liberally by the courts. (Article XI, Section 2). Thus, in addition to the fact that local governments will have much more flexible powers (given the streamlined language of the proposed code) the actual exercise of those powers is more discretionary. Especially for counties, the detailed administrative procedures will be culled substantially, leaving the local units both with more powers to exercise and greater freedom in the manner of their execution. A simple grant of power, therefore, may be the basis for a local government to design and implement an innovative program in the area of energy conservation.

(3.) The opportunity for joint jurisdictional solutions to service delivery problems is maximized. In the absence of specific legal prohibitions, any city or county may cooperate with virtually any other layer or unit of government in the exercise of any function, power or responsibility. (Article II, Section 7) This is an important flexibility in the case of energy conservation where it may be important to (a) create the proper areal or territorial jurisdiction for the application of a mandated program, or (b) expand the revenue/debt capacity of a

locality in order to meet the capital requirements of an alternative energy facility. There is in Montana a spotty record of interlocal cooperation but some models exist for services such as law enforcement, planning, health and sanitation and others. Also, two formal city-county consolidated units will become effective on May 2, 1977 in Anaconda-Deer Lodge County and Butte-Silver Bow County. These cases may provide a good testing ground for the principle that unified local energy conservation or alternative energy development programs are more effective than isolated ones. There is also the mechanism of the District Council framework in the state for the purpose of planning energy programs which may encompass several contiguous counties.

(4.) While all localities will benefit from the expanded flexibility of local self-determination, some localities will be more equal than others. The constitution provided that any city, town or county could acquire the status of "self-government powers." (Article XI, Section 6). In effect, a locality with the status of self-government powers possesses any power available to all local governments previously described in the constitution and all powers not prohibited by the constitution, law or charter. Two limiting conditions should be noted: (a) only a small group of local governments (consolidated governments in Butte-Silver Bow and Anaconda-Deer Lodge, the cities of Billings, Helena and Glasgow, Madison County and the towns of Poplar, Circle, Browning, Sunburst, Fromberg, Hingham, Virginia City, Clyde Park, Broadview and Neihart) have chosen to adapt self-government powers, to take effect May 2, 1977. (b) legislative limitations upon self-governing units are already extensive and subject to expansion in any legislative session. Thus, the degree of difference between a self-governing unit and a general government unit may not be that substantial.

In the case of an innovative energy conservation program, however, the self-governing units may be the most appropriate "pilot" projects since they can function in the gray areas where it may not be clear that a local government with general government powers has the necessary authority.

It should be noted also that the status of self-government powers constitutes no serious obstacle if a particular energy conservation program is to be mandated. According to existing RCM 47A-7-204, a local government unit with self-government powers is subject to selected provisions which prohibit the unit from acting other than as provided in state law. For example, laws affecting planning or zoning, laws regulating budget, finance or borrowing and laws dealing with eminent domain apply irrespective of general or self-government powers status. A duty or imposition related to energy conservation could be applied to self-government units by adding some relatively simple language in this section. Self-government units are also denied the power to act in a manner inconsistent with state law to the extent of imposing regulations or standards which are lower or less stringent than the state's if the area involved is affirmatively subjected to state control. Since this is defined as any area in which a state officer or agency is vested power for the establishment of administrative rules or enforcement of standards, an energy conservation program can be administratively assigned to a state agency for the implementation of uniform standards or regulations of energy conservation.

The State Department of Community Affairs (DCA) is the regularized channel for relationships between the state and local governments. This relationship is not always clearly defined, however, and numerous direct relationships between other state agencies and local governments exist. Any development of new state-local policies must consider seriously their impact upon the existing intergovernmental network. Specifically, the question of whether any new energy conservation program should be assigned as a function to DCA, another existing state agency or a revised MEAC structure should be weighed carefully, in terms of both the nature of the program proposed and the nature of the agencies involved.

It should be clear by now that the evolution of local government reorganization in Montana is still uncertain and that the profile of an energy conservation program

affecting or involving local governments will emerge at virtually the same time as possible passage of the revised code. To the extent that a particular energy program is to be guaranteed, and not hoped for, it must be included as a part of that new code. If energy conservation catches on quickly in the 1977 legislative session, there is the strong possibility that key components can be made part of the code where necessary.

Despite the uncertain future of the local government code, it seems apparent that virtually any approach to energy conservation involving or affecting local governments can be designed to fit into the state-local intergovernmental context. For example, in those areas where the imposition of a duty upon local government may be required, the addition can be placed in the appropriate section dealing with "Duties of Local Governments as Agents of the State." In those areas where the purpose is to provide the local government with the opportunity to develop an energy savings or alternate energy source of its own, the authority may be granted as part of the code. There is also the alternative that the state program may bypass the authority of the local government and impose an obligation directly upon the citizens and residents of the unit. In this case, an explicit problem of state - local relations does not exist but there remains the question of interagency coordination at the state level. In those areas where a particularly innovative pilot project may be suited and where the authority for general government units is unclear, a particular existing self-government unit may be singled out for demonstration value.